OFFICE OF THE
FARMERS' ADVOCATE
OF ALBERTA

ANNUAL REPORT
1999





#### PREFACE WATER WELL RESTORATION OR REPLACEMENT PROGRAM (WWRRP) ...... 4 SURFACE RIGHTS 6

O.	Farmer Calls Fowl	19
p.	This Land is My Land – This Land is Your Land	20
Q.	Long Overdue Payment	20

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#### **PREFACE**

This report provides a summary of the activities of the Farmers' Advocate Office (FAO) over the past year. In our annual report, we attempt to outline the workings of the Office by addressing specific areas in detail and providing synoptic illustrations of the wide variety of cases with which we deal. The concerns and enquiries our Office responds to reflect the numerous issues facing the farming community. Agriculture plays an increasingly valuable role in the growth and prosperity of Alberta. The Farmers' Advocate Office assists rural Albertans in understanding and dealing with our ever-changing world.

This report provides an opportunity for us to express our appreciation through the Minister to other departments and agencies of the government for the assistance they have provided. It is with this support and co-operation of the private sector that we are able to continue serving rural Albertans.

Dean C. Lien

Farmers' Advocate of Alberta



# JURISDICTION

The Office of the Farmers' Advocate has three primary functions.

- To investigate and solve problems. This often requires acting as a mediator in disputes involving farmers and other segments of society.
- 2. To inform rural Albertans. The Farmers' Advocate Office staff have a broad base of experience and knowledge. The mandate of the Farmers' Advocate Office is to offer advice and information that will assist rural Albertans in resolving differences and disputes in a timely and cost effective manner.
- 3. To administer the Farm Implement Act.

In disputes between individuals and local governments (rural municipalities), we advance these complaints to the respective bodies (municipal councillors, various government departments, etc.) and request information pertaining to these cases. If we find the complaint to be justified, we take measures to encourage the appropriate body to review the circumstances with us in an attempt to resolve the problem. We are pleased with the co-operation that we have received from local governments.

It is outside the jurisdiction of the Office to be involved in cases where the complainant retains legal service. Further, the Office will withdraw from any case when the complainant subsequently retains legal service. Although farmers may have a legal remedy, litigation in many cases is far too expensive, too time consuming, and too

mysterious and uncertain a procedure for all but a handful to pursue to a successful conclusion. With these exceptions, we attempt to mediate between two opposing parties with the aim of reaching an out-of-court settlement. Therefore, we recommend in private negotiations between two opposing parties, always stressing an appreciation and understanding for the position taken by the other side.

The administration of the Farm Implement Act (FIA) has been the responsibility of the Farmers' Advocate since 1992. The FIA strives to license all dealers and distributors carrying on business in the province, ensuring that each license issued is protected by adequate bond coverage. The Act enforces statutory and voluntary warranties in the purchase of new equipment, repairs and replacement parts. The Farmers' Advocate provides information and mediation as required to resolve disputes between dealers, distributors, manufacturers and farmers.

### 2 GENERAL COMMENTS

The Farmers' Advocate Office underwent an administrative change in February 1998 with the appointment of Dean Lien as Farmers' Advocate of Alberta. The office has within its ranks four assistants and two office support staff.

The Farmers' Advocate, in addition to being a facilitator and mediator for rural Albertans, is involved in a wide range of people related concerns. The Office is the voice of the rural community in numerous projects and working committees. We currently provide input to the:

- Alberta Surface Rights Federation
- Ammonite Shell Tenure Advisory Committee
- Provincial Rural Crime Watch Association
- Alberta Cattle Commission
- Land Agents Advisory Committee
- · Pipeline Environmental Steering Committee
- Environmental Protection Wellsite Reclamation and Certification Process
- Advisory to EUB and Environment on reclamation and remediation
- Geophysical Land Owners Relations Committee
- EUB Advisor on Mediation Program
- Joint Government/Industry Geophysical Steering Committee
- Waterwell Restoration or Replacement Program
- Industry Landowner Relations Committee

With technological advances in geophysical testing, the size, distance and depth of charges used for conducting seismic operations have been refined. Alberta Environment reviewed current seismic practices and amended the regulations governing seismic operations. In response to these regulatory changes, our publication Seismic Operations and Farmers' Rights was amended and is now available.

It is always important to read and understand a contract prior to signing. We receive many calls each year from individuals who have not received the payment they feel was agreed upon. If and when a landowner is approached by a land agent or salesman, it is wise to ask about each clause, get clarification and closely review the small print. If necessary, have a third party, the Farmers' Advocate Office for example, assist you. It is easier to have a contract modified or amended to suit your needs before you've signed it than it is to have the contractor provide a service that is not specified in writing.

Surface rights and landowner/energy sector relations continue to be the primary focus of the office. Increased energy activity during 1998 and early 1999 raised many concerns. The slow down during 1999 changed the nature of enquiries to situations of adverse effect and payment on contracts. In most cases, the office contacts all parties, reviews contractual agreements and through mediation develops a solution. The reclamation of wellsites continues to be an area of controversy. However, a new and refined set of soon to be released guidelines will offer some positive direction in this area.

The recent increased price for crude oil has significantly raised the level of exploration throughout the province. Viewed as an exciting time, this price increase makes landowners more skeptical about exploration than before. This is especially true when agricultural incomes are the lowest in many years.

We note a reluctance by rural communities to consent to sour gas wells or related facilities proposed for their areas. This is likely the result of some high profile concerns that have caught the attention of Albertans through the media. Hopefully, an initiative by the energy sector to improve communications with all the affected stakeholders will reduce some of the areas of concern.

In 1998 and continuing in 1999 a new committee made up of landowners and representatives from energy related industries was struck to improve relations between the two industries. At present, some efforts have been made to improve communications and establish an education program to help those involved see both sides. These efforts, coupled with up-front type of arrangements, can only improve relations.

The past year was not a year with excessive drainage problems. There were a number of concerns with water issues but with the dry year, enquiries were fewer than normal. The cooperation received from Alberta Environment and the counties and municipal districts made this work easier for the Farmers' Advocate Office.

There will always be concerns with water, whether from excessive rainfall, snow or over irrigating.

During the past year, the Office has followed closely the development of the intensive livestock industry with its inherent community involvements. Across Alberta, any intensive livestock operation development permit is being viewed with great apprehension. Unfortunately, for applicants the jurisdictions have not standardized their development guidelines. New code of practice requirements will certainly provide some standardization for development.

A review of Alberta's grazing lease policy was reviewed by a committee of MLA's chaired by Tom Thurber. Recommendations from this report was introduced in the Legislature as the Agriculture Dispositions Statutes Amendment Act, (Bill 31). This Act was passed but has not yet been proclaimed until final review of the regulations is complete. Stakeholders across the province are being consulted for their input into rules and regulations.

Rural Alberta faces daily challenges as the agriculture industry expands and diversifies. The Farmers' Advocate is mandated to provide continued assistance, support, and information to farmers and ranchers as they address the everchanging world.

# WATER WELL RESTORATION OR REPLACEMENT PROGRAM (WWRRP)

The Water Well Restoration or Replacement Program (WWRRP) was implemented in 1987 in response to the recognized need to provide financial assistance to landowners who had water wells allegedly damaged by oil and gas well drilling or seismic activity. The program is administered by the Farmers' Advocate Office and funded by the energy industry through levies to the Alberta Energy and Utilities Board (AEUB). A committee, chaired by the Farmers' Advocate, determines whether a landowner's well has been damaged by energy-related activity and sets compensation if warranted.

In 1999, 18 applications were received and processed. This number is slightly reduced from the claims received in 1998. Lower oil prices resulted in less drilling. As well, in an attempt to reduce conflict, the energy industry has been proactively testing water wells when conducting their activities. It is important that the testing program be completed properly or it may be of little value in helping determine if a water well has been affected by energy activity.

# MINERAL RIGHTS

The 1998 Farmers' Advocate Office Annual Report mentioned the introduction by the Canadian Association of Petroleum Landmen (CAPL) of a new petroleum and natural gas lease. To date this revised document is not available. This makes the 1991 CAPL lease the most recent document and the one recommended for use by the Farmers' Advocate.

The Freehold Petroleum & Natural Gas Owners Association was formed in 1999. This organization is welcomed by freehold mineral owners and the Farmers' Advocate Office. Its mandate is to provide information and advice to freehold mineral owners.

An association of this nature should be very helpful to mineral owners in negotiating petroleum and natural gas leases and dealing with the multiplicity of concerns and questions that arise from owning mineral rights. The Farmers' Advocate Office wishes them well in this endeavor.

The Farmers' Advocate Office continues to receive inquiries from mineral owners about leasing their mineral rights. Some of the inquiries are from out-of-province and out-of-country. All inquiries to Alberta Resource Development on freehold mineral rights are referred to the Farmers' Advocate Office.

Mineral owners are cautioned not to concentrate on the signing bonus offered. They should ensure that their interests are protected by addressing some of the following concerns:

- royalty rate
- · deductions from royalties for processing costs
- · lease term
- · amount to be paid under suspended well clause
- offset clause (include diagonally adjoining lands)
- terms for pooling and unitization
- where more than one company is involved, require one operator be responsible for all payments
- potential change in use from production of minerals to disposal or storage sites
- amount of bonus consideration
- · other terms and conditions

The brochure entitled Leasing Mineral Rights is available from the Farmers' Advocate Office.

MYTH - Mineral rights revert to the Crown upon the demise of a mineral owner.

FACT - Mineral rights are considered to be real property, just like land, and as such can be given away, sold, traded or willed to heirs.

# SURFACE RIGHTS

In 1999, the Alberta Energy and Utilities Board received approximately 17,700 applications, including 10,500 applications for wells, 6,100 for pipelines and 1,100 for battery and compressor sites. This flurry of activity resulted in many inquiries to the Farmers' Advocate Office.

#### a. Seismic

A new Permit to Conduct Geophysical Operations developed by the Geophysical Landowner Relations Committee, has been in use this year and has proven to be satisfactory. A revised Farmers' Advocate publication, Seismic Operations and Farmers' Rights was also released. This publication was reviewed by the Committee prior to being published.

Another initiative, geared toward informing and educating employees of geophysical companies, was the scheduling of workshops and information sessions. The Farmers' Advocate participated in several of these sessions and found them to be informative. There has been a move by geophysical operators to become more aware of landowner's concerns when negotiating a *Permit to Conduct Geophysical Operations*.

As a result of seismic activity taking place closer to towns and cities, Alberta Environment responded to concerns of landowners by mandating that all residents within 400 metres of a geophysical program be notified.

#### b. Surface

The Farmers' Advocate Office received many calls from landowners and occupants regarding their rights when an energy company wants to sign a Surface Lease or Right-of-Way Agreement. Most of these inquiries were dealt with either through telephone discussions or meetings in our office. Farmers' Advocate staff also met with rural residents in workshop settings and provided them with current information on surface leasing. Many requests were received by the Farmers' Advocate for copies of the Farmers' Advocate publication, Negotiating Surface Rights and Pipelines in Alberta - What Farmers Need to Know.

Landowners have concerns and questions about many issues. Some of these are:

- Who is responsible for contamination?
- Will the financial institutions advance funds against property where energy activity took place?
- Who will compensate me for the devaluation of my land when a pipeline is installed?

The Farmers' Advocate has noticed a movement amongst surface landowners toward taking a firmer position with energy companies in negotiating surface agreements.

The Farmers' Advocate is a member of the Canadian Association of Petroleum Producers Landowner Relations Committee. The committee recognizes the need for better communication between landowners and the energy industry. In

this regard, a landowner/land agent checklist was developed and is being used by some companies on a pilot project basis. The use of this checklist and its potential to be mandated as a handout along with other printed material will be reviewed in six months. The committee hopes to develop better understanding between the energy industry and landowners by the use of the check list.

#### c. Reclamation

Alberta Environment continues to consult with landowners and the energy industry on initiatives to improve the reclamation process. Following a public consultation process in 1998 on reclamation criteria and the certification process for well sites, a steering committee on wellsite reclamation reviewed the results and proposed future action. The recommendations from that committee were for industry to notify landowners when a well is being abandoned. The Canadian Association of Petroleum Producers, with input from the steering committee, developed a sample abandonment letter. The sample abandonment letter lets landowners know that they can discuss the abandonment and reclamation procedure with the operator; visit the site during reclamation and attend the inquiry. Alberta Environment expects abandonment letters to be issued for all wellsites being abandoned.

### 6

### **FARM IMPLEMENT ADMINISTRATION**

The Farmers' Advocate of Alberta administers the Alberta Farm Implement Act (FIA). The Office provides assistance through negotiation, mediation and arbitration for settling complaints and disputes arising over farm machinery. It also assists in locating emergency repair parts, helps farmers find sources of parts and machinery (new and obsolete), and licenses the farm implement dealers and distributors operating within the province.

The FIA provides the farmer with warranty protection, allowable time frames for replacement part availability, requirements for sales contracts and the option of arbitration. As well, the Act specifies that a new farm implement must be able to perform the work for which it was intended when operated under reasonable conditions. Should a piece of equipment fail to perform within the specified time-frame, the farmer may file a Notice of Failure to Perform. The dealer and/or distributor has specific guidelines in which to correct the failure, replace the implement or refund the purchase price. While nothing in the FIA prevents or prohibits a party from seeking legal action, the Farmers' Advocate Office and the FIA provide a cost free, expedient way to resolve concerns.

As noted last year, an ongoing concern is the increased number of farm implement seizures. Continued poor grain prices have contributed to the situation. In the past year, several farmers have contacted the Farmers' Advocate Office to discuss their rights when equipment seizure is

threatened. When prudent, we negotiate a rollover with the parties. This allows the farmer to continue his operation with a more economical unit and the dealer keeps a customer. Unfortunately, in some situations this is not possible or practical. Another strategy some farmers have adopted is to flip machinery. This started several years ago with farmers who traded in a piece of equipment and financed the new machine. Prior to the second semi-annual payment coming due this machine is flipped to a current model. After three or four flips very little or negative equity exists in the machine. Our office strongly encourages farmers to talk to their accountants prior to getting into one of these programs.

In 1999, licenses were issued to 409 dealers and 109 distributors. One company did not survive the current economic climate and entered into receivership. Under the Farm Implement Act the company's bond was successfully called, resulting in full reimbursement to seven farmers with warranty claims.

Company mergers and buy-outs are ongoing. We continue to see the merging of distributors and manufacturers into large conglomerates. Along with this, the issue of dealer purity has once again come to the forefront. Many manufacturers and distributors do not want their dealers selling competitive short-line products. Through the dealer agreement, dealers are obliged to alter their inventory to reflect the distributor's business focus. The Saskatchewan Government passed

legislation in December of 1999 to address this concern. The Farmers' Advocate Office, along with the Farm Implement Board, is reviewing the matter and will be making a recommendation to the Minister.

With the tight economy in some sectors of agriculture, farmers are keeping some older equipment running longer. We have experienced more calls for obsolete parts, along with a growing demand for our Obsolete or Hard-to-Find Part Source manual. This publication is available online at http://www.agric.gov.ab.ca/navigation/agencies/farmersadvocate/. If you can offer additional parts sources or amendments to existing information, please let us know. This site continues to grow, gaining public interest and approval.

### 7 ACTIVITIES

As in past years, 1999 proved to be interesting and challenging for the Farmers' Advocate and his staff. There were many opportunities to provide service, assistance and advice to rural Albertans. Members of the Farmers' Advocate Office worked with many individuals and interest groups on a number of important issues. The staff of the Farmers' Advocate attended and participated in educational seminars and conferences providing farmers and ranchers with current information on a variety of topics.

As well as several thousand telephone inquiries, numerous requests for assistance come to the Farmers' Advocate Office in written format. Many of these require a file to be opened which can result in many hours of investigation and follow-up. In 1999, Farmers' Advocate staff traveled to every corner of the province in excess of 100,000 kilometers. Staff attended meetings at the landowners convenience, both during regular business hours and on evenings and weekends.

The majority of inquiries received by the Farmers' Advocate Office focused on compensation and access by the energy industry onto deeded or leased land for the purpose of exploration, development and production of hydrocarbons. The Farmers' Advocate was also contacted on other matters including:

- ammonite
- · chemicals
- farm buildings
- farm equipment repair work orders

- the farm implement act
- fences
- financial problems (including bankruptcy)
- · flooding and drainage
- gas co-ops, R.E.A.s
- grade loss in grain
- groundwater (wells)
- · hail, wind and pollution
- · highways, roads and railways
- insurance
- irrigation
- · leases (farm/grazing)
- livestock (intensified and at-large)
- marketing boards
- · power lines
- reclamation
- · right-of-way (access)
- standing timber
- trespass
- waste disposal (animal/human/energy)
- · wildlife damage

As in any other sector of society, rural Albertans encounter difficulties with neighbors, local municipalities, provincial government departments, utility companies, energy companies, insurance companies, financial institutions, and a number of other individuals and agencies. The Farmers' Advocate Office received numerous requests to assist with dispute resolution. The Office was not always able to achieve a satisfactory resolution to a problem because the dispute had advanced too far and required assistance that is beyond the Office's

jurisdiction. If, however, the Farmers' Advocate becomes involved in the early stages of a dispute, it can usually work with both parties to find a mutually satisfactory solution.

The one-window approach that the Farmers' Advocate provides to rural Albertans seems to meet the needs of the rural community as is indicated by the increasing number of inquiries each year (8000+ last year).

# CASE SUMMARIES

#### a. Who Suffers the Adverse Effect?

A number of years ago a rancher purchased land with several surface leases on it. At that time the purchaser thought the wells were nearing the end of their life span and agreed that the vendor could retain the surface lease compensation. He anticipated reclamation occurring in the near future with the land being returned to him to farm.

That was not the case. For whatever reason, the operator of the abandoned wells continued paying the prior owner of the land and did not reclaim the well sites. This situation continued for many years with the sites becoming more and more of a hazard to the landowner. The landowner was experiencing the adverse effect of unreclaimed, abandoned wellsites with pieces of pipe, concrete and other potentially hazardous material projecting from the grass where his cattle grazed. This, and no compensation for his inconvenience.

The landowner requested assistance from the Farmers' Advocate Office. It was discovered that a new operator had recently taken over the leases. Upon being informed of this matter, the new operator scheduled a site inspection. Shortly after the site inspection, the operator advised that these leases would be reclaimed on a priority basis. The reclamation process is currently underway, much to the delight of the landowner.

#### b. No Apparent Cause

Not all cases are closed with definitive or positive results. That leads to the story of three farm houses situated one mile away from the coulees west of Lethbridge. Large basement cracks appeared, one house shifted two inches and floors heaved for no apparent reason. A thorough investigation was conducted and seismic activity was quickly eliminated because of a one-mile free zone. The coal mine shafts thought to be below the homes were detailed to be at least one half mile away. The result is a mystery and unfortunately for the home owners, there is no apparent cause.

#### Construction of a Pipeline Affecting a Dairy Operation

After been given information about the Farmers' Advocate Office by an oil company representative, a central Alberta dairy farmer contacted the office about a problem with a pipeline. Apparently, his dairy operation was still being impacted as a result of the pipeline operation that crossed his lowland several years ago. The oil company was now proposing a second pipeline to cross the same land and the dairy operator was reluctant to provide consent for access until the outstanding claim was resolved.

The issues the dairy farmer had were:

 subsidence along the right-of-way in the wet low area

- loss of milk production as the cows had to cross the muddy right-of-way twice a day to the dairy barn
- · extra time to clean the udders before milking
- crop loss of the affected right-of-way and the surrounding area

The total claim was for approximately \$15,000

During a meeting with both the dairy operator and the oil company representative, the dairy operator wanted some conditions included in an agreement if he was to give consent to prevent a second occurrence of damage to his land. The conditions were:

- The company agree to appoint a third party (Farmers' Advocate Office) to resolve any disputes.
- A site supervisor be hired to specifically monitor the pipeline construction while the company was on the subject land.
- The crop loss on the affected right-of-way would be prepaid.
- An offer of \$5,000 to settle the outstanding claim for the previous damage.

Negotiations for the damages continued at another time and an agreement was finally reached. On a follow-up by our Office, it was learned that the second pipeline operation went smoothly and the right-of-way was reclaimed to the dairy operator's satisfaction.

#### d. Get it in Writing

When the economy on the farm tightens up and cash flow diminishes, farmers look for ways to pay down bills and survive until the economy improves. It is simply a matter of survival.

A common way to increase the cash flow is to sell off machinery which is no longer used. Some farmers sell this machinery on their own but others, who do not have time (working off the farm) or are inexperienced in sales, decide to have a farm equipment dealer sell the machinery on their behalf. If this is the case, communication is very important. The machine cannot be simply dropped off. A verbal commitment to sell equipment usually ends up in a disagreement. In one case, this is exactly what happened. The machine was sold for less than the agreed price, but at a price that reflected the current market. Machinery prices had dropped during the consignment period. In order to make the sale the dealer also had to make some repairs to the machine. The cost of repairs had never been discussed.

The Farmers' Advocate Office had to mediate a settlement. This could have been prevented if the farmer and dealer had discussed the sale of the machine in detail and had a written agreement.

Common concerns that should be addressed prior to consignment are:

· the agreed consignment price

- the sales commission does it come off the sales price or must the dealer get over and above the consignment price
- if repairs are required, who is to pay for the repairs?
- get all the information in writing on a consignment sales agreement

#### e. Pasture Lease

Often times farmers and ranchers find themselves in situations where they should have had written, signed agreements before the fact, instead of after. Such is the case of a lady who rented out her pasture land. Her renters were not willing to pay her the verbally agreed upon rent and it appeared she was going to lose her income. After counseling with our Office, she seized the cattle that were on her property and released them only after payment was received. She now has been paid and this year a contract was signed to alleviate any questions about payment. Often times the Office provides straight forward information to farmers and ranchers to assist them in managing their daily affairs.

#### f. An Honest but Costly Mistake

To reduce costs a dealer decided to cross reference air filters rather than purchase the Original Equipment Manufactured (OEM) filter. After servicing the nearly new "trade-in" combine, it was sold.

Unfortunately, the new replacement filter was not placed alongside the original filter to compare the actual size. At a distance they appeared to be identical but the replacement filter was a quarter inch shorter than the original and problems arose. When tightened up, it bottomed out against the filter holding mechanism rather than the bottom of the canister. With a gap at the back of the filter canister, a clear path was provided for dust to get into the engine. Within several hours of operation the turbo failed. It was replaced and after several more hours of operation the engine began consuming oil at an alarming rate. Upon inspection, the remaining engine oil was dirtier than usual after several hours of operation. The engine was "DUSTED" as a result of installing an improper filter.

The selling dealer repaired the European manufactured engine in the (North American made) combine. Because it was an European engine, parts were more expensive than usual. The cost of a new turbo, rings, con rod bearings, main bearings and gaskets cost the dealer in excess of \$10,000. A costly repair resulting from a simple mistake.

#### g. Land Acquisition by Stealth

Several cases have been brought to the attention of the Farmers' Advocate in the past year where farmers are losing a portion of their land base. Notable is the fact that a land sale has not taken place, nor has an expropriation procedure. The

common denominator in these cases is that in each circumstance water was involved. Sometimes it was a slough; sometimes a dam or creek.

In general, individuals or groups seeking ecological enhancement of wetland areas, sometimes with the involvement of a government department, will seek to raise water levels. Even when the raised levels are only a few inches it can mean a loss of appreciable acres for some surrounding landowners. Many of these landowners agree to these occurrences, as not only is there increased opportunities for wildlife, but often enhanced hay production on intermittently flooded areas. And then there are the others, those who have no desire to lose any of their cultivated acres but find themselves in an ongoing conflict in which they must constantly monitor the level of a structure or blockage that could raise water levels on their property.

While the landowner doesn't have any changes made to the title on his land, he may lose considerably in the utility of the property.

### h. Does He Really Know How to Fix it?

The cost squeeze is being felt when it comes to machinery repair. With shop rates at main line equipment dealers around the \$50 per hour rate, some farmers are looking elsewhere for repair work.

In every community there are small shops, or farms, or acreages with considerably lower shop rates. They are usually run by someone who once worked for a main line equipment dealer. Not only do they repair the line they are familiar with, but all other lines plus the occasional car and truck. In today's industry it is very difficult to be knowledgeable on repairing every kind and type of machinery.

In this particular instance, a 25-year-old, 100 horse power tractor needed a set of engine bearings - both connecting rod and main bearings. It seemed simple enough. Remove the oil pan, lower the crank and spin the new main bearings in. Then, replace the connecting rod bearings and the job would be complete.

The rear crankshaft oil seal is held in place with a "pot-metal" seal holder. Years prior a service bulletin was issued stating that the bolts were not to be removed or installed using an air impact wrench. Because of its soft nature, the sudden impact of an air wrench could crack or shatter the seal holder. The small repair shop mechanic, in this instance, was not aware of the service bulletin. An air impact wrench was used and a corner tab broke off the seal holder. When the engine was started, the oil pressure would build up to normal but because of the broken seal holder it would pump engine oil into the transmission cavity. In just a few hours of operation the engine was without oil and the crankshaft seized to the main bearings.

An inspector from our office attended the partially disassembled engine and noted the oil leak when the oil lube gallery was pressured using compressed air. In a few seconds the oil was running past the broken tab on the seal holder. Even when the repairing mechanic was presented with this information he would not acknowledge responsibility.

Unfortunately, this matter will be proceeding through small claims court for resolution.

If you are contemplating taking a machine in for repair to a smaller shop, ask if the repairing mechanic has expertise specific to your piece of machinery. Ask for references and check with people who have had similar repairs completed, to see if they are satisfied.

#### i. Orphan Well

A farmer from the east central portion of the province contacted our office about an abandoned wellsite. Apparently, the farmer had rented a quarter of land for a number of years from a neighbor. He was aware of a well, located in the center of the field, which had not produced any hydrocarbons. When the landlord passed away, the renter purchased the property from the estate. It was at this time he learned that the owners of the well had never paid any annual compensation payments to the landowner since the well was drilled in 1985.

During our review of the concern we learned that the former principals of the small oil company that drilled the well were not to be found. In addition, we could not find a copy of the surface lease which the owner needed to apply to the Surface Rights' Board under section 39 of the act. The act provides for the payment of annual compensation when the operator fails to do so. It was also noted that no caveat for the well had ever been registered on the subject land. In fact, the well was categorized as an orphan well.

During our inspection of the subject well in August last year, we noted that the grain crop on the former well site appeared to be consistent with the rest of the field. The only impediment we could find was a section of the well casing left sticking up approximately 18 inches out of the ground.

Our office contacted the manager of the orphan well program, who agreed that the subject well casing would be removed and sealed in accordance with the criteria required by the Alberta Energy Utilities Board. When this is done, the landowner will be able to farm unimpeded on the former well site.

#### j. A Collapsed Building

In January, the Farmers' Advocate Office received a letter from a west central Alberta vegetable farmer complaining that a 56 x 110 foot steel quonset building, one of three built on the farm in

the early 1990's, had collapsed. Some equipment that had been stored inside for the winter was damaged by the collapse. Although there was two feet of snow cover up to that time, there had been heavier snowfalls in previous years which did not cause a failure. It is assumed the stress may have weakened the structure. The building supplier had already visited the site and offered to rebuild the quonset for half the cost of a new one. The owners found this unacceptable.

The Farmers' Advocate Office contacted the building supplier to set up a mediation at our office with the owners of the vegetable farm. After consulting their lawyer, the building supplier agreed on the condition and understanding that anything said or agreed to at our meeting would be confidential and could not be used as evidence should the matter not be resolved and brought before a court. The meeting, although lengthy. was successful as an agreement was eventually reached. The company agreed to remove the collapsed portion of the building, salvage the end wall and rebuilt the quonset between spring and freeze-up in the fall. The owners of the farming operation would dispose of the metal and be responsible for the repair of any of the damaged equipment in the collapsed building. They also agreed to pay a negotiated amount to help off-set the building suppliers cost.

The Farmers' Advocate Office was informed in October that the building had been reconstructed to the owners specifications and satisfaction. They

thanked our office for providing assistance in their time of need.

#### k. Insurance Claim

The Farmers' Advocate Office was contacted by a paralegal firm that was unable to resolve a damage claim for their client. The claim involved the replacement of a Skidsteer tractor engine. Apparently, a central Alberta farmer had been preparing a roadway with his recently purchased Skidsteer when he inadvertently backed down an embankment and submerged the rear portion of the unit in water. Unfortunately, this was where the air intake was located and it sucked water into the engine causing nearly \$12,000 damage. The manufacturer of the Skidsteer rejected the claim for warranty and advised the farmer to contact his insurer. The farmer put the claim into the hands of the paralegal firm to pursue the insurance company on his behalf. The insurance company refused to accept the claim. Our office also contacted the insurer relaying that in our opinion the farmer had coverage as his policy included a specific clause addressing damage to farm equipment by foreign objects. The senior claims officer of the insurance company advised that water is not considered to be a foreign object and denied the claim. Our office then contacted the Superintendent of Insurance in Alberta. After a review we were informed by the superintendent's office that the insurance company had indicated that a formal claim for damages had not been

received from the farmer, paralegal firm or our Office. The insurance company indicated that they thought the Farmers' Advocate Office was just inquiring about a hypothetical situation. We advised the farmer to make another "formal" claim which we understand was accepted by the insurance company. A cheque (less the deductible) was forwarded to the farmer.

It is also noteworthy that the Skidsteer manufacturer has since relocated the air intake to hopefully prevent a repeat of this situation.

#### I. Who is Responsible for Equipment Damage?

An Alberta farmer called the Farmers' Advocate Office incensed that damage had occurred to his haybine because of a tree stump. He was convinced that the power company should be obligated to repair his damaged machine. A copy of the equipment repair bill was sent to the Office by the farmer's accountant. Inquires by Farmers' Advocate Office staff revealed that the farmer had leased a hay field from a neighbor and was harvesting his field for the first time. Apparently, a power line traversed one side of the field and under that power line trees had been cut by power crews on previous occasions. The damage to the hay bine occurred as the operator was attempting to cut hay under the power line right-of-way.

Inquires made with the power company revealed that they had been contacted by the farmer prior to our involvement. The company's had checked the area in question for the stumps causing the problem and found them to be of no more than four inches in height. This conforms with regulations pertaining to brushing under power lines. At no time did the farmer indicate that the stump causing damage to his machine was in excess of four inches in height. He did however, indicate that the uneven topography of the area in combination with the stump resulted in the damage.

The Farmers' Advocate did not find the power company at fault and cautioned the farmer that under the circumstances responsibility lay with him to take the duty of care for his machine.

#### m. Fence Line Dispute

A cattle farmer contacted our office to advise that he was being sued by an acreage owner over the removal of a fence. The acreage owner paid for a legal survey of his property. He then built a page wire fence adjoining the farmer's land. The farmer thought that the fence encroached on his property. He said the corner posts were correct but the middle was on his land by one and half to two feet. The farmer, wanting a straight fence that would hold his cattle in, bull-dozed the neighbor's fence. The acreage owner commenced a legal action in the amount of \$5,600 to recover loss and legal fees.

The FAO made a site inspection and held separate meetings with the owners, but little progress was made. After explaining to the farmer that he was responsible for replacing his neighbor's fence, we arranged a joint meeting with the acreage owner, his lawyer and the farmer. This meeting resulted in a successful mediation and resolution to the problem. The acreage owner agreed to remove trees that were two feet inside of the property line. The farmer agreed to build a new page wire fence at his cost. All legal proceedings were then stopped.

#### n. Don't Assume - Communicate

In the early summer, a landowner north of Calgary contacted our office for advice on the location of a proposed pipeline on his property and an adjoining cemetery. The landowner was not objecting to having the pipeline and was in negotiations at the time with the company on right-of-entry and remuneration. On his return from a business trip to Calgary he discovered the contractor had commenced construction on his land. Approval had not been granted, resulting in a trespass situation.

Th landowner called to request the advice of the Farmers' Advocate. We recommended he tell the contractor to stop work immediately and temporarily remove the equipment. The FAO then contacted the energy company. The company was very apologetic and understood the landowner's position. As a result of poor

communication between the energy company and its sub-contractor, the work had commenced prematurely. The farmer, who was originally negotiating a moderate settlement, was now unwilling to accept the same amount. Because of this incident he increased his position substantially. The company, recognizing their error, agreed to pay him a higher sum. The pipeline tie was completed with both the landowner and company being very pleased with the mediator role of the FAO.

#### o. Farmer Calls Fowl

A farmer applied for a grazing lease on public lands that he had been using for the past 10 years. Situated next to a lake, this action started a process that included a site inspection by Alberta Agriculture, Food and Rural Development's Public Lands and Alberta Environment's Natural Resource Service.

The request for the grazing lease was subsequently denied. Public Lands are subject to wildlife reservation. In this case, nesting habitat for a variety of water fowl species was identified on the land was not suitable for grazing. These lands were considered to be highly sensitive due to the soils and its proximity to shoreline areas where nesting is more likely to occur. Because of these factors, they felt grazing would not be a compatible activity with the long-term objectives to manage this site for waterfowl habitat programs.

The farmer was then told that all cattle must be confined to the deeded lands. To ensure the confinement of the cattle a boundary fence would be required at an estimated cost of \$10,000 to \$15,000. At this time the farmer contacted the FAO. As a result of a meeting and site assessment by the FAO, it was felt the farmer was being treated unfairly. A meeting was arranged with Alberta Agriculture, Food and Rural Development, Alberta Environment and the FAO. A satisfactory solution was worked out with the following conditions:

- · no grazing before August 1
- · salt blocks located on deeded land only
- single wire electric fence to keep cattle off Public Lands before August 1
- renewal of the permit was unusual as long as the farmer abided by the conditions

All parties were please with the outcome.

### p. This Land is My Land – This Land is Your Land

Situations sometimes occur that make one wonder what happened. This was the case for one family who constructed their house and yard site approximately 20 years ago, on what they thought was their land. The deeded land surrounds a small lake. The family's house and yard site were built fairly close to the lake. They were able to watch the birds and wildlife from their front room window. They also pastured several horses on that

land. Unfortunately, a portion of their house, the garage and barn were built on Crown land. Neither the Crown nor the landowner was aware of the situation until the municipality issued a weed notice for the area around the lake. It was then discovered that the land was owned by the Crown.

The landowner, a widow on pension, did not have the resources or knowledge to rectify the problem. She wanted to sell her property but could not do so until the matter was resolved. She requested assistance from the Farmers' Advocate. Numerous meetings and discussions took place with several government departments. It was agreed that a land exchange would offer the best resolution. In the end, the landowner agreed to exchange deeded land for Crown land. Both parties were satisfied with the resolution of this matter.

#### q. Long Overdue Payment

A landowner signed a release for damages on a pipeline that was installed the previous year. He was advised that he would receive a cheque in a few weeks. Two months passed with no contact from the company. Several calls were made to the company by the landowner. A number of reasons were given as to why he had not been paid. The landowner became frustrated with the delay and contacted the Farmers' Advocate for assistance with getting the money owed to him.

The Farmers' Advocate contacted the company. According to the company, there had been an administrative error which would be rectified immediately. Several weeks went by and the landowner still did not receive payment. Another call by the Farmers' Advocate to the company finally resulted in the landowner receiving payment. All it took was approximately three months and many phone calls.

If the matter had been settled in a timely manner it would have created good will and confidence between the landowner and the energy operator. Unfortunately, the Farmers' Advocate is called upon frequently to assist landowners in obtaining settlement for what is rightfully owed to them.